

## SPECIAL SIXTEENTH DIVISION

[ CA-G.R. CV NO. 94806, March 06, 2014 ]

**ORLANDO A. RAYOS, PLAINTIFF-APPELLANT, VS. REMEDIOS V. CARONONGAN, PATRIA R. SERRANO, ROBERTO R. SERRANO, TEOFILA B. SISON, PAZ V. SISON, MANUEL B. SISON, WILFREDO B. SISON, LETICIA R. VENTANILLA (NEE LORETO), AND ROSALINDA B. BARROZO, DEFENDANTS-APPELLEES.**

### D E C I S I O N

**VILLON, J.:**

This is an appeal under *Rule 41* of the *1997 Rules of Civil Procedure, as amended*, from the Joint Order dated December 11, 2009<sup>[1]</sup> issued by the Regional Trial Court (RTC), Branch 198, Las Pinas City, in Civil Case No. LP-09-0064, for *Specific Performance and Breach of Contract*, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the instant complaint filed by Orlando Rayos (Civil Case 09-0064) is hereby **DISMISSED** on the ground of *res judicata*. As regards the motion and counterclaim to cite counsels in contempt of court, the same are **DENIED**, for lack of merit.

SO ORDERED."

The facts of the case, as culled from the records are:

Sometime in March 2007, plaintiff-appellant Orlando A. Rayos filed a Complaint for *Specific Performance, Breach of Contract and Damages* against defendants-appellees Remedios V. Caronongan, Patria R. Serrano, Roberto R. Serrano, Teofila B. Sison, Paz V. Sison, Manuel B. Sison, Wilfredo B. Sison, Leticia R. Ventanilla (nee Loreto) and Rosalinda B. Barrozo with the RTC of Las Pinas City, which was docketed as Civil Case No. LP-07-0071. The case was raffled off to Branch 275 thereof. In the complaint, appellant sought the enforcement of a purported contract authorizing him to work for the demolition of some structures on a property in Tondo co-owned by the herein parties and, to ultimately sell the same. Appellees, however, allegedly stopped the demolition and refused to honor the terms of their contract, to appellant's damage and prejudice. Thus, appellant sought relief from the court to direct appellees to reimburse or indemnify him for the expenses that he already incurred relative to his undertaking under the contract.

Upon appellees' motion to dismiss and after due hearing, the trial court issued the Order dated April 10, 2008<sup>[2]</sup> dismissing the Complaint in Civil Case No. LP-07-007, to wit:

"WHEREFORE, in the light of the foregoing, the Motion to Dismiss filed by the defendants is hereby GRANTED. Let the Amended Complaint of the plaintiff be dismissed as it is hereby DISMISSED. As a consequence, the five other pending incidents are considered moot and academic.

SO ORDERED."

Appellant challenged the above Order before this Court via a special civil action for certiorari under *Rule 65*, docketed as CA-G.R. UDK-SP No. 5939. In a Resolution dated May 6, 2008,<sup>[3]</sup> the then Ninth Division of this Court dismissed the said petition, the same being a wrong mode of appeal, the dispositive portion of which reads:

"**WHEREFORE**, in view of the foregoing, the instant petition for certiorari, filed with the Court of Appeals, is hereby **DISMISSED**.

**SO ORDERED."**

Appellant's motion for reconsideration was denied in the Resolution dated July 9, 2008.<sup>[4]</sup>

Unperturbed, appellant filed a petition for review on certiorari with the Supreme Court, which case was docketed as G.R. No. 183980. For failure of appellant to sufficiently show that the Court of Appeals committed any reversible error in the challenged resolution, the petition was denied by the Supreme Court in a Resolution dated August 20, 2008.<sup>[5]</sup> The Resolution attained finality on January 28, 2009.<sup>[6]</sup>

On March 10, 2009, appellant filed another Complaint for *Specific Performance and Breach of Contract*<sup>[7]</sup> against herein appellees with the RTC of Las Pinas City, which was docketed as Civil Case No. LP-09-0064 (subject of the present appeal) and was raffled off to Branch 198. Basically, the complaint was anchored on appellees' alleged breach of their obligation, specifically, authorizing appellant to secure writs and orders of demolition with respect to the structures found on subject property. His authority was allegedly revoked for unknown reasons, for which reliefs from the court were prayed for.

Appellant filed an *ex-parte* motion to serve summons by extraterritorial service<sup>[8]</sup>, but the same was denied in the RTC Order dated August 24, 2009.<sup>[9]</sup> The court ordered that summons be served at the given addresses of appellees.

Appellees filed an "Omnibus Motion to Dismiss and to Cite Plaintiff in Contempt of Court"<sup>[10]</sup> on the following grounds:

- a) the complaint is barred by *res judicata* or prior judgment; and,
- b) appellant is guilty of forum shopping.

On December 11, 2009, the trial court issued the assailed Joint Order in the terms earlier set forth.

Hence, this appeal anchored on the following assigned errors:<sup>[11]</sup>

I. THE RTC OF LAS PINAS, BRANCH 275 IN CIVIL CASE NO. 07-0071 COMMITTED AN ERROR WHEN IT DISMISSED THE COMPLAINT BASED ON A MOTION TO DISMISS, SINCE THERE IS A CAUSE OF ACTION.

II. THE DISMISSAL ON GROUNDS OF RES JUDICATA IS SIMILARLY PREEMPTORY AND ERRONEOUS SINCE THERE WAS NO TRIAL ON THE MERITS IN CIVIL CASE NO. 07-0071, THEREFORE NO EVIDENCE

PRESENTED, SO THERE CAN BE NO RES JUDICATA, SINCE THERE WAS NO ADJUDICATION ON THE MERITS.

***The appeal is without merit.***

The resolution of this case hinges on the principal issue of whether or not the dismissal of the complaint in the first case (Civil Case No. LP-07-0071) on the ground of failure to state a cause of action operates as *res judicata* in the present case (Civil Case No. LP-09-0064). Appellant admits that the cause of action alleged in the complaint in the present case is practically the same as that alleged in the first case. However, he argued that the order of dismissal in the first case was not an adjudication on the merits, there being no trial conducted and no evidence presented therein. Appellant contends that the judgment dismissing the first case for failure to state a cause of action was not a judgment on the merits. Appellees argue otherwise.

A case is barred by prior judgment or *res judicata* if the following elements concur: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. In this instance, the judgment in the first case constitutes an absolute bar to the second action.<sup>[12]</sup>

In dismissing the first case, the trial court held that:

"Plaintiff [appellee] in his Amended Complaint, wants this Court to enforce the alleged contract between him and defendants by directing the latter to reimburse the plaintiff the expenses incurred in the demolition. Aside from the mere mention of the contract which apparently is silent on the matter of plaintiff financing the demolition, plaintiff stated no more and cited no other basis why he is entitled to said reimbursement. The Amended Complaint is unambiguous and uncertain as to what right plaintiff stands on to pursue his cause of action.

X X X X X X X X

"Notably plaintiff did not refute the allegations made by the defendants in their Motion to Dismiss. If indeed the authority to finance the demolition is part of the agreement by the defendants with the plaintiff, the latter could have simply pointed out in his Opposition (re: Motion to Dismiss) but this he miserably failed to do and instead made the following averments, to wit:

'8. Plaintiff has a very good (cause) of action as spelled out in ANNEX 'B' of the Amended Complaint, by the Resolution of the Asst. Prosecutor therein as remedy for a breach of contract which is by specific performance or rescission, which in both cases, damages may lie. And who are the defendants who say, that plaintiff does have a cause of action, they do not have a